



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 27, 1998

Ms. Tana K. Van Hamme  
The Ronquillo Law Firm  
Harwood Center  
1999 Bryan Street, Suite 3450  
Dallas, Texas 75201

OR98-0807

Dear Ms. Van Hamme:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114050.

The Dallas Independent School District (the "district"), which you represent, received a request for the following:

1. Any and all internal audits or reports regarding DISD roofing contracts within the last three years.
2. The names and addresses of any and all schools or locations where roofing repairs were done or were supposed to be done.
3. Any and all audits or reports regarding DISD contracts with Time Saving Construction Company.
4. Any and all internal memos, reports or invoices regarding DISD roofing contracts in the last three years.
5. Any and all memos, reports or requests between DISD attorneys administrators and or employees regarding roofing contracts within the last three years.
6. DISD policy on contract bidding for maintenance work like roofing.
7. Names, titles, addresses and phone numbers of any and all DISD employees involved in roofing contracts over the last three years.

You explain that you have requested clarification from the requestor concerning requests 2 through 7. Gov't Code 552.222; Open Records Decision No. 333 (1982) (ten-day deadline does not begin to run during the time that the requestor and the governmental body attempt to resolve access to the records informally and there is legitimate confusion as to the scope of the request). You have, nevertheless, identified several categories of documents that are responsive to the request. You state that you will release some of the requested information. You assert, however, that certain portions of the request seek information that is excepted from disclosure by sections 552.103, 552.107, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents that you have submitted.<sup>1</sup>

You first claim that some of the requested information is excepted from disclosure by sections 552.103 and 552.107 of the Government Code. We presume that you are raising both sections for the sample document submitted as Exhibit D and section 552.103 only for Exhibit F. As we resolve this part of the ruling based on section 552.103, we need not address your argument under section 552.107 at this time. Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The district has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The district must meet both prongs of this test for information to be excepted under 552.103(a).

In this instance, you explain that the district is currently involved in litigation. *Dallas Indep. Sch. Dist. v. Risby*, No. 97-08578 (162nd Dist. Court, Dallas County, Tex., filed Sept.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

19, 1997). You have provided this office with the original pleadings in the case. After reviewing the submitted material, we find that you have shown that litigation is pending. We also conclude that the information in Exhibits D and F are related to the pending litigation. You may withhold Exhibits D and F under section 552.103.

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You next claim that the information labeled Exhibit G may be withheld under section 552.108. Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the information in Exhibit G concerns an ongoing investigation being conducted by the district's Internal Relation Department. You represent that this department is designated as a law enforcement agency by section 37.081 of the Education Code. Because you have shown that the release of the requested information would interfere with the detection, investigation or prosecution of crime, we conclude that the requested information in Exhibit G may be withheld under section 552.108(a)(1). *See* Open Records Decision No. 216 (1978). We note, however, that information normally found on the front page of an offense report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

Finally, you contend that some of the requested information may be protected by section 552.117. This section excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the home telephone number or social security number of a current or former employee or official

who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 114050

Enclosures: Submitted documents

cc: Ms. Christi O'Connor  
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(w/o enclosures)